

in the claimed active agent-containing compositions affords greater thermal stability for such compositions.¹

The most recent Office Action asserts that three references (Dahms, Erilli and Ribier) render the claimed invention obvious. However, none of these references, alone or in combination, teach or suggest the claimed compositions having the claimed surfactant system. Dahms is completely different from the claimed invention. The hexagonal structures in Dahms are unstable bubbles, not a paracrystalline phase of the hexagonal type which provides thermal stability. Erilli neither teaches, suggests, nor recognizes the importance of incorporating the claimed surfactant systems into foaming cream compositions, nor does Erilli teach or suggest thermally stabilizing foaming cream compositions or how to achieve such stabilization. Erilli's deficiencies are highlighted by the fact that Erilli's compositions are liquid, and that his compositions do not contain water-insoluble surfactants. Ribier, which relates to compositions containing multiple dispersions of active agent-containing lipid vesicles, neither teaches, suggests, nor recognizes any benefits resulting from the claimed surfactant system having at least one paracrystalline phase. Thus, the claimed compositions are neither taught nor suggested by the cited art. Accordingly, these compositions, which represent an advance in the art, are deserving of patent protection.

¹ As noted in the present specification, current foaming cream compositions are not thermally stable, resulting in product separation into at least two phases after storage under hot conditions (that is, above 40°C). (Page 4, lines 2-5). Such thermally unstable products, after storage under hot conditions, are unusable due to the degradation of the products' texture as well as their foaming properties. (Page 4, lines 5-8). Because commercial products are often subject to temperatures as high as 50°C during transport (page 4, lines 15-17), thermal instability of such foaming cream compositions represents a substantial problem. The presently claimed compositions address such problems associated with foaming cream compositions.

In view of this background, each of the rejections made in the outstanding Office Action will now be addressed in turn.

OBJECTION UNDER 37 C.F.R. §1.75(C)

The Office Action objected to claim 3 for failing to further limit the subject matter of claim 1. Although Applicants disagree with this objection for at least the reason that the relevant properties of the claimed compositions are not limited to the values set forth in claim 3, Applicants' canceling claim 3 renders this objection moot. Accordingly, Applicants respectfully request that this objection be withdrawn.

REJECTION UNDER 35 U.S.C. §103

The Office Action rejected claims 1-29 under 35 U.S.C. § 103 as obvious over U.S. patent 5,911,981 ("Dahms"), U.S. patent 5,629,279 ("Erilli") and U.S. patent 5,601,833 ("Ribier"). In view of the following comments, Applicants respectfully request reconsideration and withdrawal of this rejection.

Dahms discloses foam compositions (for example, shaving cream). Dahms' goal is to prolong the presence of "wet foam" (for up to 40 minutes) by increasing the length of time spherical bubbles are present after air or gas has been dispersed in a surfactant-containing liquid (for example, after shaving cream has been dispensed from its container).

According to Dahms (cols. 1-2), prolonging the length of time spherical bubbles are present allows liquid to remain present between such bubbles, thereby allowing the foam to remain "wet." When liquid begins to drain from the spaces between the bubbles due to gravity, spherical bubbles change into hexagonal bubbles. Because the hexagonal bubbles do

not possess liquid between them, foams containing such bubbles are known as “dry foams.”

Dry foams are unstable due to the rapid breaking of hexagonal bubbles, which leads to a rapid reduction in foam volume (for example, shaving cream will quickly break down if left on the bathroom sink after it has been dispensed).

Dahms is completely different from the claimed invention. The hexagonal structures in Dahms are unstable bubbles, not a paracrystalline phase of the hexagonal type which provides thermal stability. Dahms does not disclose compositions containing a surfactant system having at least one paracrystalline phase, nor does Dahms disclose or suggest the benefit of thermal stabilization resulting from such a paracrystalline phase. One skilled in the art, seeking to obtain a thermally stable composition, would not have been led by Dahms to produce a composition containing the claimed surfactant system having at least one paracrystalline phase.

Erilli neither teaches, suggests, nor recognizes the importance of incorporating the claimed surfactant systems into foaming cream compositions, nor does Erilli teach or suggest thermally stabilizing foaming cream compositions or how to achieve such stabilization. Erilli's deficiencies are highlighted by the fact that Erilli's compositions are liquid, and that his compositions do not contain water-insoluble surfactants. (See, e.g., col. 7, lines 1-3 where Erilli states that “[a]ll of the aforesaid ingredients in this light duty liquid detergent are water soluble or water dispersible and remain so during storage.”). In contrast, the presently claimed compositions are foaming cream compositions (not liquid). Moreover, the claimed surfactant system contains both a water-soluble surfactant and a water-insoluble surfactant to achieve the claimed paracrystalline phase. (See, page 10, lines 20-23).

Ribier does not compensate for Dahms' and Erilli's deficiencies. Ribier relates to compositions containing multiple dispersions of active agent-containing lipid vesicles. It

neither teaches, suggests, nor recognizes any benefits resulting from the claimed surfactant system having at least one paracrystalline phase.

Thus, Dahms, Erilli and Ribier, alone or in combination, do not teach or suggest the claimed cream compositions having the claimed paracrystalline phase. Accordingly, no *prima facie* case of obviousness exists.

In view of the above, Applicants respectfully submit that the rejection under 35 U.S.C. § 103 should be withdrawn.

Applicants submit that the present application is in condition for allowance. Prompt and favorable consideration is earnestly solicited.

Respectfully submitted,

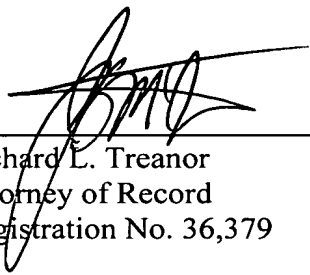
OBLON, SPIVAK, McCLELLAND,
MAIER & NEUSTADT, P.C.



22850

Tel #: (703) 413-3000

Fax #: (703) 413-2220



Richard L. Treanor
Attorney of Record
Registration No. 36,379

Jeffrey B. McIntyre
Registration No. 36,867

I:\user\BMC\N'Oreal\211813 amd aft final.wpd

Marked-Up Copy
Serial No: 09/941,589
Amendment Filed on:
October 2, 2002

Claim 3 (canceled)